

Amendment No. 1 to SB1566

Beavers
Signature of Sponsor

AMEND Senate Bill No. 1566

House Bill No. 1576*

by deleting the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, 29-17-103, is amended by designating the existing language as subsection (a), and is further amended by adding the following language as a new subsection (b):

(b) Notwithstanding subsection (a), this part shall not preempt procedures to determine valuation of property under part 2 and part 3 of this chapter.

SECTION 2. Tennessee Code Annotated, Title 29, Chapter 17, Part 2, is amended by deleting the part in its entirety and by substituting instead the following:

29-17-201.

As used in this part:

(1) "AAA" means the American Arbitration Association;

(2) "Eminent domain" is as defined under § 29-17-102;

(3) "Appraiser" means an appraiser who possesses the designation Member of the Appraisal Institute (MAI), or who is otherwise a licensed and qualified appraiser under title 62, chapter 39.

(4) "Person" means a natural person, a corporation, firm, company, association, or other legal entity;

(5) "Property" means real property whether leasehold or in fee simple, any buildings, improvements or structures on real property, any easements, rights, and appurtenances belonging to real property, or any combination of the aforementioned;

(6) "Public use" is as defined under § 29-17-102; and

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(7) "Send", "notice" or "notify" means mailed by certified mail or hand delivered with a receipt obtained at the time the delivery is made.

29-17-202.

(a) Counties are empowered to condemn and take property of persons by eminent domain for a public use for county purposes. Notwithstanding any law to the contrary, a county exercising authority to condemn and take property pursuant to this subsection (a) shall file a petition to initiate condemnation proceedings in a court that has subject matter jurisdiction over the property.

(b)

(1) Prior to a county filing a petition, the county shall send notification to the property owner that includes, at a minimum:

(A) The county's intent to initiate condemnation proceedings sixty (60) days from the date that the property owner receives the county's written notice;

(B) A statement of value which lists the amount that the county offers to the property owner as damages, and which shall be deposited in court as required by law if condemnation proceedings are commenced; and

(C) A form, created by the county, that describes the following options available to the property owner in order to adjudicate the issue of damages:

(i) The property owner may accept the amount listed in the statement of value and demand immediate payment of the amount from the county;

(ii) The property owner may reject the amount listed in the statement of value and proceed to the negotiation process described in § 29-17-204;

(iii) The property owner may reject the amount listed in the statement of value and proceed to the arbitration process described in § 29-17-205, notwithstanding § 29-5-101, by sending a signed and dated arbitration initiation form to the county; or

(iv) The property owner may reject the amount listed in the statement of value and proceed in court as provided in chapter 16, part 1 of this title, by filing an answer on the issue of damages within the sixty-day period; provided, that by filing an answer with the court, the property owner shall waive the negotiation process described in § 29-17-204 and the arbitration process described in § 29-17-205;

(D) The name and address of the entity to whom the property owner must give notice; and

(E) an arbitration initiation form created by the county.

(2) If the property owner is unknown, is a nonresident of this state, or cannot be found, notice shall be given by publication, which shall be made in the same manner as provided by law for similar situations in chancery court.

(3) If the county abandons the petition prior to the court rendering its decision on possession of the property, and if the county later decides to initiate such proceedings against the property, then the county shall send new notice pursuant to subdivision (b)(1).

(c)

(1) After the expiration of the sixty-day period described in subdivision (b)(1)(A), the county may initiate condemnation proceedings.

(2)

(A) If the right to take was not challenged in an answer by the property owner within the sixty-day period described in subdivision (b)(1)(A), then the court shall find that the county has the right to take possession of the property.

(B) If the right to take was challenged in an answer by the property owner within the sixty-day period described in subdivision (b)(1)(A), then the court shall determine, as a matter of law, whether the county has the right to take the property.

(3) If the court determines that the county has the right to take, then the county shall have the right to take possession of the property, and, if necessary, the court shall issue a writ of possession to the sheriff of the county to put the county in possession. The writ may be issued prior to a trial on the issue of damages.

29-17-203.

(a) The property owner shall send the form described in § 29-17-202(b)(1)(C), signed and dated, to the county within the sixty-day period allowed for filing an answer. If the property owner fails to send the form in the sixty-day period, then the only options available to the property owner on the issue of damages shall be the options listed in §§ 29-17-202(b)(1)(C)(i) and (iv), as applicable.

(b) Upon the expiration of the sixty day-period, the county may initiate condemnation proceedings as provided by law and, as applicable, deposit the amount listed in the statement of value as required by law; provided, that, if a county receives a form from the property owner pursuant to subsection (a), then the county shall send a copy of such form to the court.

29-17-204.

(a) If, on the prescribed form, the property owner selects the option to reject the amount listed in the statement of value and proceed to the negotiation process, then the property owner shall submit a counter offer, along with the prescribed form, to the county within the sixty-day period as described in § 29-17-202(b)(1)(A).

(b) The county shall review and compare the property owner's counter offer with the amount listed in the statement of value to determine the fair market value of the property.

(c)

(1) The county shall send written notice to the property owner within sixty (60) days of receiving the property owner's counter offer. Such written notice shall state the county's decision to:

(A) Accept the property owner's counter offer;

(B) Reject the property owner's counter offer; or

(C) Reject the property owner's counter offer and make its own counter offer.

(2)

(A) The property owner shall have sixty (60) days to respond to the county's counter offer.

(B) If the property owner rejects the county's counter offer the property owner may elect:

(i) To revive the county's original valuation of the property under § 29-17-202(b)(1)(C)(i);

(ii) To initiate arbitration proceedings under § 29-17-202(iii), by sending a completed arbitration initiation form to the county with the written notice of rejection, before the expiration of the sixty-day period; or

(iii) To challenge the valuation of the property in court under § 29-17-202(iv).

(3) If the county fails to send written notice to the property owner within the sixty day-period described in subdivision (c)(1), then the county shall be deemed to have accepted the property owner's counter offer.

(d)

(1)

(A) If the county accepts the property owner's counter offer, affirmatively or by default, and the county has deposited the amount listed in the statement of value with the court, then the county shall send written notice to the court that shall include, at a minimum:

(1) A copy of the property owner's counter offer;

(2) A signed and dated form signifying the county's acceptance of the property owner's counter offer; and

(3) A check, money order, or similar document from the county to the court for any balance owing in excess of the amount already deposited with the court, plus any interest or other such amount that the property owner is entitled to by law.

(B) The court shall, upon the request of the property owner, disburse the amount deposited by the county to the property owner.

(2) If the county accepts the property owner's counter offer and the county paid in bond to the property owner the amount in the statement of value, then the county shall issue to the property owner a check, money order, or similar document from the county to the property owner for any balance owing in excess of the amount already paid in bond, plus any interest or other such amount that the property owner is entitled to by law.

(3) If the county accepts the property owner's counter offer and the county has not deposited the amount listed in the statement of value with the court or paid the property owner such amount in bond, then the county shall send a check, money order, or similar document from the county to the property owner

in the full amount listed in the property owner's counter offer, plus any interest or other such amount that the property owner is entitled to by law.

(e) If the property owner receives a rejection of the counter offer pursuant to subsection (c), the property owner may revive the highest offer made by the county in the negotiation process.

29-17-205.

(a) Prior to commencement of arbitration, the property owner shall submit an appraisal of the property, conducted by an appraiser, at the property owner's sole expense to the county and the arbitrator.

(b)

(1) The parties may agree upon selection of an arbitrator;

(2) If the parties cannot agree upon selection of an arbitrator, the property owner may elect to proceed to arbitration with the AAA, in which case the following shall apply, notwithstanding the Tennessee Uniform Arbitration Act:

(A) The county shall, within fifteen (15) days of receipt of a signed and dated arbitration initiation form, notify the AAA of such circumstances, and an arbitrator shall be appointed by the AAA within fifteen business (15) days of receipt of the county's notice by AAA.

(B) Arbitration shall commence within sixty (60) days after the appointment of the arbitrator to determine the fair market value of the property; and

(C) The arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than ten (10) days before the hearing; and

(3) If the parties cannot agree upon selection of an arbitrator and the property owner does not elect to proceed to arbitration with the AAA, then the property owner may request that the court in which the proceeding is pending

appoint an arbitrator, in accordance with the Tennessee Uniform Arbitration Act, to hear the case and make the determination of just compensation.

(c) The arbitration costs shall be split equally between the property owner and the county. If multiple property owners are parties to the arbitration, each property owner shall be responsible for an equal share of fifty percent (50%) of the arbitration costs. Each party shall be responsible for the party's own discretionary costs.

(d) Either party may request that the court enter judgment confirming, modifying or vacating the decision and award of the arbitrator in accord with the provisions of the Tennessee Uniform Arbitration Act, and the judgment of the court shall be subject to appeal as provided in that act.

29-17-206.

(a) Counties are empowered to condemn and take the property, buildings, privileges, rights, and easements of individuals and private corporations for any county purpose.

(b) All counties authorized to construct bridges are empowered to take and condemn the property of persons for approaches to such bridges and for bridge purposes, or which may be necessary for the construction or use of such bridges.

(c) Pending the assessment of damages or any litigation in regard to the assessment of damages, in any case of authorized taking and condemnation, the counties may give bond in the amount listed in the statement of value, with good and sufficient security payable to the property owner, to pay promptly to the property owner any amount of damages which may be assessed pursuant to this part or chapter 16, part 1 of this title; and, upon executing and filing such bond, the county may take the property.

(d) Except as provided in this section, this part shall not apply to the acquisition of an interest in property to be used to provide a utility service.

SECTION 3. Tennessee Code Annotated, Title 29, Chapter 17, Part 3, is amended by deleting the part in its entirety and by substituting instead the following:

29-17-301.

As used in this part:

- (1) "AAA" means the American Arbitration Association;
- (2) "Eminent domain" is as defined under § 29-17-102;
- (3) "Appraiser" means an appraiser who possesses the designation Member of the Appraisal Institute (MAI), or who is otherwise a licensed and qualified appraiser under title 62, chapter 39.
- (4) "Municipality" means a city or town which adopts a charter pursuant to title 6 or by private act as a city;
- (5) "Person" means a natural person, a corporation, firm, company, association, or other legal entity;
- (6) "Property" means real property whether leasehold or in fee simple, the buildings, improvements and structures thereon, and all easements, rights, and appurtenances belonging to such land;
- (7) "Public use" is as defined under § 29-17-102; and
- (8) "Send", "notice" or "notify" means mailed by certified mail or hand delivered with a receipt obtained at the time the delivery is made.

29-17-302.

(a) Municipalities are empowered to condemn and take property of persons by eminent domain for a public use.

(b)

(1) Prior to a municipality filing a petition, the municipality shall send written notice to the property owner that includes, at a minimum:

(A) The municipality's intent to initiate condemnation proceedings sixty (60) days from the date that the property owner receives the municipality's written notice;

(B) A statement of value which lists the amount that the municipality offers to the property owner as damages, and which shall be

deposited in court as required by law if condemnation proceedings are commenced;

(C) A form, created by the municipality, that describes the following options available to the property owner in order to adjudicate the issue of damages:

(i) The property owner may accept the amount listed in the statement of value and demand immediate payment of the amount from the municipality;

(ii) The property owner may reject the amount listed in the statement of value and proceed to the negotiation process described in § 29-17-304;

(iii) The property owner may reject the amount listed in the statement of value and proceed to the arbitration process described in § 29-17-305, notwithstanding § 29-5-101, by sending a signed and dated arbitration initiation form to the municipality; and

(iv) The property owner may reject the amount listed in the statement of value and proceed in court as provided in chapter 16, part 1 of this title, by filing an answer on the issue of damages within the sixty-day period; provided that by filing an answer with the court, the property owner shall waive the negotiation process described in § 29-17-304 and the arbitration process described in § 29-17-305;

(D) The name and address of the entity to whom the property owner must give notice; and

(E) an arbitration initiation form created by the municipality.

(2) If the property owner is unknown, is a nonresident of this state, or cannot be found, notice shall be given by publication, which shall be made in the same manner as provided by law for similar situations in chancery court.

(3) If the municipality abandons the petition prior to the court rendering its decision on possession of the property, and if the municipality later decides to initiate such proceedings against the property, then the municipality shall send new notice pursuant to subdivision (b)(1).

(c)

(1) After the expiration of the sixty-day period described in subdivision (b)(1)(A), the municipality may initiate condemnation proceedings.

(2)

(A) If the right to take was not challenged in an answer by the property owner within the sixty-day period described in subdivision (b)(1)(A), then the court shall find that the municipality has the right to take possession of the property.

(B) If the right to take was challenged in an answer by the property owner within the sixty-day period described in subdivision (b)(1)(A), then the court shall determine, as a matter of law, whether the municipality has the right to take the property.

(3) If the court determines that the municipality has the right to take, then the municipality shall have the right to take possession of the property, and, if necessary, the court shall issue a writ of possession to the sheriff of the county to put the municipality in possession. The writ may be issued prior to a trial on the issue of damages.

29-17-303.

(a) The property owner shall send the form described in § 29-17-302(b)(1)(C), signed and dated, to the municipality within the sixty-day period allowed for filing an answer. If the property owner fails to send the form in the sixty-day period, then the only

options available to the property owner on the issue of damages shall be the options listed in §§ 29-17-302(b)(1)(C)(i) and (iv), as applicable.

(b) Upon the expiration of the sixty day-period, the municipality may initiate condemnation proceedings as provided by law and, as applicable, deposit the amount listed in the statement of value as required by law; provided that, if a municipality receives a signed and dated form from the property owner pursuant to subsection (a), then the municipality shall send a copy of such form to the court.

29-17-304.

(a) If, on the prescribed form, the property owner selects the option to reject the amount listed in the statement of value and proceed to the negotiation process, then the property owner shall submit a counter offer, along with the prescribed form, to the municipality within the sixty-day period as described in § 29-17-302(b)(1)(A).

(b) The municipality shall review and compare the property owner's counter offer with the amount listed in the statement of value to determine the fair market value of the property.

(c)

(1) The municipality shall send written notice to the property owner within sixty (60) days of receiving the property owner's counter offer. Such written notice shall state the municipality's decision to:

(A) Accept the property owner's counter offer;

(B) Reject the property owner's counter offer; or

(C) Reject the property owner's counter offer and make its own counter offer.

(2)

(A) The property owner shall have sixty (60) days to respond to the municipality's counter offer.

(B) If the property owner rejects the municipality's counter offer the property owner may elect:

(i) To revive the municipality's original valuation of the property under § 29-17-302(b)(1)(C)(i);

(ii) To initiate arbitration proceedings under § 29-17-302(iii), by sending a completed arbitration initiation form to the municipality with the written notice of rejection, before the expiration of the sixty-day period; or

(iii) To challenge the valuation of the property in court under § 29-17-302(iv).

(3) If the municipality fails to send written notice to the property owner within the sixty day-period described in subdivision (c)(1), then the municipality shall be deemed to have accepted the property owner's counter offer.

(d)

(1)

(A) If the municipality accepts the property owner's counter offer, affirmatively or by default, and the municipality has deposited the amount listed in the statement of value with the court, then the municipality shall send written notice to the court that shall include, at a minimum:

(1) A copy of the property owner's counter offer;

(2) A signed and dated form signifying the municipality's acceptance of the property owner's counter offer; and

(3) A check, money order, or similar document from the municipality to the court for any balance owing in excess of the amount already deposited with the court, plus any interest or other such amount that the property owner is entitled to by law.

(B) The court shall, upon the request of the property owner, disburse the amount deposited by the municipality to the property owner.

(2) If the municipality accepts the property owner's counter offer and the municipality paid in bond to the property owner the amount in the statement of

value, then the municipality shall issue to the property owner a check, money order, or similar document from the municipality to the property owner for any balance owing in excess of the amount already paid in bond, plus any interest or other such amount that the property owner is entitled to by law.

(3) If the municipality accepts the property owner's counter offer and the municipality has not deposited the amount listed in the statement of value with the court or paid the property owner such amount in bond, then the municipality shall send a check, money order, or similar document from the municipality to the property owner in the full amount listed in the property owner's counter offer, plus any interest or other such amount that the property owner is entitled to by law.

(e) If the property owner receives a rejection of the counter offer pursuant to subsection (c), the property owner may revive the highest offer made by the municipality in the negotiation process.

29-17-305.

(a) Prior to commencement of arbitration, the property owner shall submit an appraisal of the property, conducted by an appraiser, at the property owner's sole expense to the municipality and the arbitrator.

(b)

(1) The parties may agree upon selection of an arbitrator;

(2) If the parties cannot agree upon selection of an arbitrator, the property owner may elect to proceed to arbitration with the AAA, in which case the following shall apply, notwithstanding the Tennessee Uniform Arbitration Act:

(A) The municipality shall, within fifteen (15) days of receipt of a signed and dated arbitration initiation form, notify the AAA of such circumstances, and an arbitrator shall be appointed by the AAA within fifteen business (15) days of receipt of the municipality's notice by AAA.

(B) Arbitration shall commence within sixty (60) days after the appointment of the arbitrator to determine the fair market value of the property.

(C) The arbitrator shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than ten (10) days before the hearing.

(3) If the parties cannot agree upon selection of an arbitrator and the property owner does not elect to proceed to arbitration with the AAA, then the property owner may request that the court in which the proceeding is pending appoint an arbitrator, in accordance with the Tennessee Uniform Arbitration Act, to hear the case and make the determination of just compensation.

(c) The arbitration costs shall be split equally between the property owner and the municipality. If multiple property owners are parties to the arbitration, each property owner shall be responsible for an equal share of fifty percent (50%) of the arbitration costs. Each party shall be responsible for the party's own discretionary costs.

(d) Either party may request that the court enter judgment confirming, modifying or vacating the decision and award of the arbitrator in accord with the provisions of the Tennessee Uniform Arbitration Act, and the judgment of the court shall be subject to appeal as provided in that act.

29-17-306.

(a) All municipal corporations are empowered to take and condemn lands, property, property rights, privileges and easements of others for the purpose of constructing, laying, repairing, or extending sewers, water pipes, natural gas mains and pipes, or drainage ditches, both within and beyond the corporate limits of such cities, and of acquiring ingress and egress in the construction, repairing or maintenance thereof, and in making connection thereto; such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise

held or used for public purpose; provided, that such prior public use will not be interfered with by this use.

(b) Except as provided in this section, this part shall not apply to the acquisition of an interest in property to be used to provide a utility service.

SECTION 4. Tennessee Code Annotated, 29-17-801(b), is amended by adding the following language to the beginning of the subsection: "Notwithstanding any law to the contrary."

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to any taking of property by eminent domain by a county or municipality for a public purpose on or after the effective date of this act.